

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



76-1321

UNITED STATES COURT OF APPEALS  
for the  
SECOND CIRCUIT

B  
F.85

UNITED STATES OF AMERICA,

Appellee

v s

JEROME REYNOLDS and MELVIN JACKSON,

Appellants

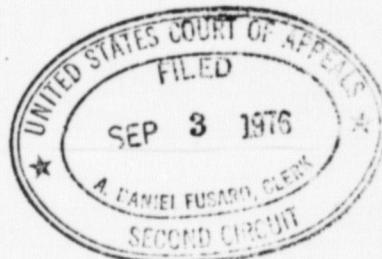
Docket No. 76-1321

---

APPENDIX FOR APPELLANTS

BRIEF

---



ROCCO D. POTENZA  
Attorney for Appellants  
Office & P.O. Address  
1100 Chemical Bank Building  
Buffalo, New York 14202  
Telephone: (716) 853-5300

PAGINATION AS IN ORIGINAL COPY

INDEX FOR APPENDIX

|   | Page |
|---|------|
| CRIMINAL DOCKET - CR-75-175               | A-1  |
| INDICTMENT NO. CR-75-175                  | A-3  |
| JUDGMENT AND PROBATION/COMMITMENT ORDER:  |      |
| JEROME REYNOLDS                           | A-5  |
| MELVIN JACKSON                            | A-9  |
| ABSTRACT FROM TRIAL TRANSCRIPT - PP 37-39 | A-13 |
| ABSTRACT FROM TRIAL TRANSCRIPT - PP 44-65 | A-16 |

UNITED STATES COURT OF APPEALS  
for the  
SECOND CIRCUIT

---

UNITED STATES OF AMERICA,

Appellee

v s

JEROME REYNOLDS and MELVIN JACKSON,

Appellants

Docket No. 76-1321

---

APPENDIX FOR APPELLANTS

BRIEF

---

**CRIMINAL DOCKET**  
**UNITED STATES DISTRICT COURT**

Part in  
agent  
secret

CR - 75 - 175

JOHN T. ELEVIN

C. Form No. 100 Rev.

|   |  |                         |
|---|--|-------------------------|
| TITLE OF CASE   |  | ATTORNEYS               |
| THE UNITED STATES   |  | For U.S.:               |
| vs.   |  | Roger Williams, AUSA    |
| JEROME REYNOLDS and   |  | Richard Mellenger, Esq. |
| MELVIN JACKSON  |  | 502 U.S. Courthouse     |
|   |  | Buffalo, N.Y. 14202     |
| d knowingly, intentionally and unlawfully possess<br>th intent to distribute a substance containing<br>eroin, a Schedule I Controlled Substance, in vio.<br>ticle 21, U.S.C., Section 841(a)(1) |  |                         |
| For Defendant:  |  |                         |
| Michael Blotnik   |  |                         |
| 69 Delaware Avenue  |  |                         |
| Buffalo, NY 14202   |  |                         |
| Rocco Potenza   |  |                         |
| 100 Chemical Bank Bldg.   |  |                         |
| Buffalo, N.Y. 14202   |  |                         |

Offenses: 7/10/75

1 Ct.

| DATE    | PROCEEDINGS   |
|---------|---|
| July 30 | Filed Indictment  |
| July 30 | J.S. 2 made   |
| Aug. 5  | Proceedings before the Magistrate - Atty. Richard Weiss appeared for defts. (of counsel for Atty. Rocco Potenza). By consent, arraignments were adj. to 8/6/75  |
| Aug. 6  | Proceedings before the Magistrate - Atty. Rocco Potenza appeared for defts; Defts. enter pleas of not guilty. Discovery motions are to be filed by 8/18/75; the Govt. is to respond by 8/22/75 and argument is scheduled for 8/26/75; Defts continued on \$5,000 surety bond as previously set. |
| Aug. 19 | Proceedings before Magistrate - No appearance for deft. Due to hospitalization of defts atty, Rocco Potenza new discovery schedule was set; Filing motions 8-29-75 Govts response 9-5-75; argument of motions 9-9-75.   |

29 Filed Magistrates papers: complaint of violation for both deft's. filed surety bond in the amt. of \$5,000 for deft Jackson, and Reynolds.

9 Proceedings before the Magistrate - No appearance for defts.; Mr. Potenza has requested adj.; New schedule set for discovery; Filing motions 9/16/75; Government's response, 9/19/75; Argument of motions - 9/23/75

15 Filed Defendants' notice of motion for a hearing, etc.. Inspection of

| DATE     | PROCEEDINGS   |
|----------|---|
| 1975     |   |
| Sept. 15 | the Grand Jury minutes, etc., discovery, etc., Bill of Particulars, et ret. 9/23/1975- Magistrate   |
| Sept. 16 | Proceedings before the Magistrate - Motions have been filed Govt. to respond by 9-19-75 and argument on 9-23-75   |
| Sept. 23 | Proceedings before the Magistrate Mr. Blatnik (Mr. Potenza's office) appeared for defendants. Government's responses are being filed today. Argument of motions rescheduled Sept. 30, 1975, 10:30   |
| Oct. 1   | Filed Govt's response to defts' pre-trial discovery motions.  |
| Oct. 2   | Argument on motions - granted in part; denied in part. Discovery is   |
| Oct. 9   | Case Transferred to Judge Elvin   |
| Oct. 20  | Filed Government's supplemental response to defendant's pre-trial motion  |
| Oct. 20  | Filed Govt's motion to move action for trial  |
| Nov. 3   | Case set for trial on January 13, 1976  |
| 1976     |   |
| Mar. 15  | Set Date For Trial - Case set for trial 5/4/76  |
| May 4    | Jury is selected by not sworn. Court advised jury they will be notified when to appear to start trial.  |
| May 13   | Filed subpoena - Chester, Shear served 5/7/76   |
| May 13   | Govt. moves case to trial before Judge Elvin and Jury, at Buffalo, N.Y. adj. from 5/4/76; Trial adj. to 5/14/76   |
| May 14   | Trial continues with same appearances and jury; Court denies Deft's motions to dismiss. Jury retires to deliberate upon their verdict. Jury returns a verdict of guilty against Both Defts.; Jury is discharged.; Bail is continued; Sentencing set for 6/14/76 |
| June 14  | Deft. Reynolds is sentenced to the custody of the Attorney General for a period of Ten (10) Years with a mandatory Three (3) Years of parole to follow--Elvin, J.   |
| June 14  | Deft. Jackson is sentenced to the custody of the Attorney General for a period of Five (5) Years with a mandatory Three (3) Years to follow--Elvin, J.  |
| June 16  | Filed Notice of appeal for both defendants  |
| June 18  | Defts. <sup>(cv)</sup> notice of appeal, with form A, cy. of docket entries mailed to the CCA; Cy. of notice of appeal also mailed to U.S. Atty., and defts.'   |
| June 21  | Filed J & C for both defts. execution issued.   |
| June 25  | Filed Ct. Steno's transcript of excerpts from the trial before Judge Elvin and a Jury, commencing on 5/4/76 at Buffalo, N.Y.  |
| June 28  | Filed Ct. stenographer's transcript of proceedings taken on 6/14/76   |
| June 28  | Filed scheduling order from the CCA - record to be docketed to the CCA by 7/16/76; Cy. of the transcript shall be filed by 7/16/76  |
| July 19  | Filed marshal's return of J & C for deft. Jackson. Deft. to USP, Lewisburg, PA.   |
| July 23  | Filed certified cy. of J & C for Jerome Reynolds, with Marshal's ret. of execution to the U.S. Penitentiary at Atlanta, Georgia on 7/15/76  |

# In the District Court of the United States

For the Western District of New York

THE UNITED STATES OF AMERICA

-vs-

JEROME REYNOLDS and  
MELVIN JACKSON

MARCH 1975 SESSION <sup>Term</sup>  
(Impaneled May 27, 1975)

No. Cr 75-175

Vio. T. 21, U.S.C.,  
Sect. 841(a)(1)

## COUNT I

The Grand Jury charges:

On or about the 10th day of July, 1975, in the Western District of New York, the defendants, JEROME REYNOLDS and MELVIN JACKSON, did, knowingly, intentionally and unlawfully possess with the intent to distribute approximately 10.67 grams gross weight of a substance containing heroin, a Schedule I controlled substance as set forth in Title 21, United States Code, Section 812; all in violation of Title 21, United States Code, Section 841(a)(1).

RICHARD J. ARCARA  
RICHARD J. ARCARA  
United States Attorney

A TRUE BILL:

Earl R. Decker  
Foreman

Form DJ-195  
(Ed. 2-7-66)

No. \_\_\_\_\_

UNITED STATES DISTRICT COURT

WESTERN *District of* NEW YORK

*Division*

THE UNITED STATES OF AMERICA

*vs.*

JEROME REYNOLDS and  
KELVIN JACKSON

**INDICTMENT**

*A true bill,*

*John M. Gleeson*  
Foreman.

Filed in open court this 30<sup>th</sup> day  
of July, A. D. 1975

*Clark.*

*Ball, §*

United States of America vs.

DEFENDANT

UNITED STATES v. JEROME REYNOLDS  
Case No. 67-129911  
Western District of New York  
DOCKET No. 67-1975-175-N.Y.  
To 31/12/76

United States District Court for

JUDGMENT AND PROBATION/COMMITMENT ORDER

AC-25 (7-74)

In the presence of the attorney for the government:  
the defendant appeared in person on this date

40330-133

MONTH DAY YEAR  
June 14, 1976

COUNSEL

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Rocco Patenza

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,  NOT GUILTY

JUDGMENT

Defendant has been convicted as charged of the offense(s) of **did knowingly, intentionally and unlawfully possess with intent to distribute a substance containing heroin, a Schedule I Controlled Substance, in vio. Titel 21, U.S.C., Section 841(a)(1)**

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE  
OR  
PROBATION  
ORDER

**sentenced to the custody of the Attorney General for a period of ten (10) years with a mandatory three (3) years of parole to follow.**

SPECIAL  
CONDITIONS  
OF  
PROBATION

RECEIVED  
MAY 21 1976  
U.S. DISTRICT COURT  
Erie Co. N.Y.

RECEIVED  
MAY 21 1976  
U.S. DISTRICT COURT  
Erie Co. N.Y.

ADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

ADDITIONAL  
CONDITIONS  
OF  
PROBATIONCOMMITMENT  
RECOMMEN-  
DATION

SIGNED BY  
 U.S. District Judge  
 U.S. Magistrate

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends:

ACLU/NSA, GGD  
 It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE June 18 1976  
 BY Susan Schlecht  
 ( ) CLERK  
 ( ) DEPUTY

JOHN T. ELFFVIN

JOHN T. ELFFVIN, U. S. District Judge  
June 14. 1976

Marshal Return  
I personally executed this w.c. by transporting the  
subject JEROME Reynolds from the Monroe Co. Jail  
Rockaway 6-8-76 to U.S. Pen. Lewisburg PA  
for further removal.

2 3882

J. S. King  
by John A. Dunn  
DHS 21

WITNESS

WITNESS

WITNESS

WITNESS

THE DEFENDANT, JEROME REYNOLDS, is informed that he is granted probation and is directed to observe the following conditions of probation:

GENERAL  
CONDITIONS  
OF  
PROBATION

Where probation has been ordered the defendant shall, during the period of probation, conduct himself as a law-abiding, industrious citizen and observe all conditions of probation prescribed by the court. **TO THE DEFENDANT - You shall:**  
 (1) refrain from violation of any law (federal, state, and local) and get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer;  
 (2) associate only with law-abiding persons and maintain reasonable hours;  
 (3) work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability (When out of work notify your probation officer at once, and consult him prior to job changes);  
 (4) not leave the judicial district without permission of the probation officer;  
 (5) notify your probation officer immediately of any change in your place of residence;  
 (6) follow the probation officer's instructions and report as directed.

The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The following is to be inserted whenever any of the above conditions of probation are violated or violated by the defendant: (a) submit probationer to a civil hearing (b) not

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on June 14, 1976 to Erie Co H C Buffalo, NY

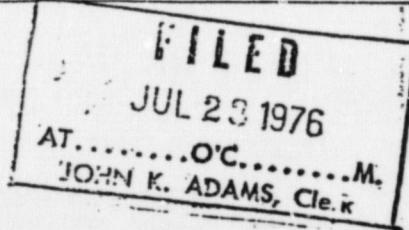
Defendant noted appeal on \_\_\_\_\_

Defendant released on \_\_\_\_\_

Mandate issued on \_\_\_\_\_

Defendant's appeal determined on \_\_\_\_\_

Defendant delivered on 15 July 76 to United States Penitentiary



at Atlanta, Georgia, the institution designated by  
the Attorney General, with a certified copy of the within Judgment and Commitment.

John J. Bunker

United States Marshal

By David S. Fair deputy

Deputy Marshal, No. 201

WIVILLE .T. WHIT

U. S. DEPARTMENT OF JUSTICE, BUREAU OF INVESTIGATION  
ATLANTA, GA.

## United States District Court for

United States of America vs.

MELVIN JACKSON

WESTERN DISTRICT OF NEW YORK

DEFENDANT

DOCKET NO. Cr-1975-175

## JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government  
the defendant appeared in person on this dateMONTH DAY YEAR  
June 14, 1976

COUNSEL

WITHOUT COUNSEL      However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL      Michael Bleznik  
(Name of counsel) 6-15-76

PLEA

GUILTY, and the court being satisfied that       NOLO CONTENDERE,  NOT GUILTY

JUDGMENT &  
SENTENCE

There being a ~~finding~~ verdict of       NOT GUILTY. Defendant is discharged  
 GUILTY.

Defendant has been convicted as charged of the offense(s) of **did knowingly, intentionally and unlawfully possess with intent to distribute a substance containing heroin, a Schedule I Controlled Substance, in vio. Title 21, U.S.C., Section 841(a)(1)**

U.S. DISTRICT COURT  
W.D. OF N.Y.  
19 8 30 AM  
FILEDSENTENCE  
OR  
PROBATION  
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant

hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of  
**sentenced to the custody of the Attorney General for a period of five (5) years with a mandatory three (3) years to parole to follow.**

SPECIAL  
CONDITIONS  
OF  
PROBATION

Erie Co. N.Y.

June 14, 1976

RECEIVED U.S. MARSHAL  
Jun 21 1976 PH '76  
W.D.N.Y., BUFFALO, N.Y.ADDITIONAL  
CONDITIONS  
OF

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke

OPTIONAL  
CONDITIONS  
OF  
PROBATION

COMMITMENT  
COMMEN-  
TATION

SIGNED BY  
 U.S. District Judge  
 U.S. Magistrate

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends, A

SPIN 12 BROWNS

RELEASING  
It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE June 18, 1976  
 BY Susan Schlicht  
 ( ) CLERK  
 ( ) DEPUTY

JOHN T. ELFVIN, U. S. District Judge

June 14, 1976

COURT OF COMMON PLEAS, BUREAU OF JUDICIAL SERVICES

JULY 1976

TRADING

BUREAU OF JUDICIAL SERVICES

COURT OF COMMON PLEAS, BUREAU OF JUDICIAL SERVICES

GENERAL  
CONDITIONS  
OF  
PROBATION

Where probation has been ordered the defendant shall, during the period of probation, conduct himself as a law-abiding, industrious citizen and observe all conditions of probation prescribed by the court. **TO THE DEFENDANT** — You shall:

- (1) refrain from violation of any law (federal, state, and local) and get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer;
- (2) associate only with law-abiding persons and maintain reasonable hours;
- (3) work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability (When out of work notify your probation officer at once, and consult him prior to job changes);
- (4) not leave the judicial district without permission of the probation officer;
- (5) notify your probation officer immediately of any change in your place of residence;
- (6) follow the probation officer's instructions and report as directed.

The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

SOMETIME  
RE  
MONTASCR  
RECORD

## RETURN

SPECIAL  
COMMITTALS  
RE  
MONTASCR

I have executed the within Judgment and Commitment as follows:

Defendant delivered on June 14, 1976 to Erie Co H.C. Buffalo, N.Y.

Defendant noted appeal on \_\_\_\_\_

Defendant released on \_\_\_\_\_

Mandate issued on \_\_\_\_\_

Defendant's appeal determined on \_\_\_\_\_

Defendant delivered on 7-8-76 to UNITED STATES PENITENTIARYJAILOR/DO  
PROTICION  
RE  
MONTASCR

at LEWISBURG, PA., the institution designated by  
the Attorney General, with a certified copy of the within Judgment and Commitment.

THIRTY TWO  
MEMO  
MCIT-43

Edward S. King

United States Marshal

By John H. Loney

Deputy Marshal

WITNESS & I PHOT

424 1

442.41

442.41 442.41 442.41 442.41 442.41

1 Q. You weighed it first. I presume after opening --  
2 breaking the seal, you would weigh the contents of  
3 the smaller baggies within that bag?

4 A. Yes, that is correct.

5 Q. Did you also weigh the contents of the smaller baggies  
6 after you took them out of that particular bag?

7 A. I can tell you what I did, because we are talking  
8 about several packages, right? I found this plastic  
9 bag to contain these bundles and, naturally, I'm not  
10 interested in the weight of the plastic bag, I am  
11 interested in the weight of the powder in the little  
12 bundles. I weighed maybe two or three of the  
13 envelopes themselves and took an average.

14 Q. In other words, you didn't --

15 A. Weigh each bag? No.

16 Q. You did not weigh each little glassene bag nor did you  
17 weigh them all together?

18 A. I weighed them all together, yes.

19 Q. In the bag?

20 A. Yes, with the powder in the bag.

21 Q. Now, did you take -- did you test -- your samples  
22 that you tested, did that have some from each one  
23 of those little baggies?

24 A. I didn't do each and every sample on the screen. I  
25 did fifteen, if I recall.

1 Q. Fifteen out of the thirty-five or so little glassene  
2 bags?

3 A. Right. My report indicates that.

4 Q. Now, did you do fifteen individual tests on each  
5 sample that you took out of one of those glassene  
6 bags?

7 A. The screening test, the original marquis and nitric  
8 acid, furfural.

9 Q. Which turned out negative?

10 A. It told me one thing. You say they are negative --

11 Q. Which gave you results that were not indicative that  
12 heroin was in fact present?

13 A. At that point I am not looking for heroin in partic-  
14 ular, I am screening them to see if there is a  
15 possibility that heroin might be there, and the  
16 mere fact that I did not get a conclusive test at  
17 that point, I would not say that is negative.

18 Q. Thank you, Mr. Griffith. Now, you tested fifteen  
19 of those little glassene bags individually, is that  
20 correct?

21 A. Right, my initial screening.

22 Q. Your conclusive test that you performed, did you  
23 perform those fifteen times?

24 A. No. My next step was to go and take eight of that  
25 fifteen and proceed, and I found them to give me

1 what I was looking for, they all were the same.

2 Q. Did you test -- the eight that you took out of the  
3 fifteen that you had, did you perform the chromoto-  
4 graphy test on all eight of them?

5 A. No, sir, a composite was made from these eight.

6 Q. In other words, you took a little bit of each one  
7 of the eight samples and put it into one sample and  
8 tested that?

9 A. That is right. That is where the vial comes in.

10 Q. So you could not conclusively say that each one of  
11 those baggies contain heroin, could you?

12 A. Definitely not.

13 Q. Can you tell how many?

14 A. I can say the ones that I used possibly might have  
15 all contained heroin.

16 Q. Might?

17 A. Yes. I didn't do each and every bag. It would use  
18 up all the evidence if I went through.

19 Q. Thank you. Now, after you performed the tests on  
20 all these different samples that you had taken from  
21 the original sample that was delivered to you -- the  
22 original package that was delivered to you -- you  
23 resealed all the evidence, is that correct, or you  
24 weighed it again and then resealed it?

25 A. Reweighed it. I didn't reseal the envelopes, I just

1 PROCEEDINGS OF MAY 14, 1976, COMMENCING AT 9:05 A.M.

2

3 (Defendants absent, jury absent,  
4 counsel present.)

5

6 THE COURT: Mr. Mellenger, I have noted the  
7 absence of the defendants. We think that  
8 due to an inadvertence, a misconstruing  
9 by them of my instructions on time, where  
10 I had indicated we would be here for this  
11 purpose, namely, the defendants' motions  
12 at this hour, and that the jury would  
13 return at nine-thirty, they may have picked  
14 up the latter instruction. Mr. Blotnik,  
15 is it satisfactory to you that we proceed  
16 with the defendants' motions without the  
17 defendants being here?

18 MR. BLOTKNIK: Yes, your Honor.

19 THE COURT: All right.

20 MR. BLOTKNIK: There are a number of motions I would  
21 like to make, your Honor. First of all,  
22 I would like to make a motion for a dismissal  
23 of the case for failure to establish a  
24 prima facie case. My main objection is  
25 that the prosecution has failed to establish

1 a continuous chain of custody of the  
2 controlled substance in question. I am  
3 aware that the cases indicate that it is  
4 sufficient if the arresting officer, who  
5 had initial custody of the contraband,  
6 seals it and mails it by registered mail  
7 to the technician, and the technician  
8 testifies to the same effect that he  
9 received the material in the sealed  
10 envelope, and so forth, that that is  
11 sufficient. However, the cases indicate  
12 that the agent, as well as the chemist,  
13 would have to testify as to the normal  
14 office procedure within their particular  
15 offices, as to what their routine is as  
16 regards handling of the contraband. Now,  
17 in both cases, as relates to both witnesses  
18 in this case, the arresting officer, Agent  
19 Peterson, testified that he had no knowledge  
20 as to what the particular procedure in the  
21 office was. As a matter of fact, he testif-  
22 ied that several -- almost any agent in the  
23 office would have access to the evidence in  
24 the evidence vault once the vault was opened  
25 by one of the technicians, only two of whom

had the combination to the vault.' He testified at times he went and retrieved --

THE COURT: This is one of the defendants, is it not, Mr. Jackson?

MR. JACKSON: Yes.

THE COURT: Let the record reflect that Mr. Jackson has now come into the courtroom. Go ahead.

MR. BLOTHNIK: And Agent Peterson testified that he didn't know if there was any receipts, if there was any log book kept in which entries were made in a chronological or any other manner indicating the retrieving or placing of evidence in the vault. He subsequently in the afternoon came back and said he thought --

THE COURT: Also Mr. Reynolds is in the courtroom.

MR. BLOTHNIK: In the afternoon he had thoughts about what I asked him earlier that morning, and he informed me the receipts were sometimes made, however, they were destroyed, there was no evidence kept of them. In summary, my opinion is that he really didn't know the proper procedure in the office. The same went as far as the chemist was concerned. He said he was totally ignorant as to what

1 occurred in the office, other than from the  
2 time that he received the sample until the  
3 time he gave it back to the vault technician,  
4 and on that basis, I think the chain of  
5 custody has not been established, and I  
6 think that the People's case should be  
7 dismissed, the chain of custody being a  
8 material element to the prima facie case.

9 THE COURT: As to that aspect, is there any case  
10 that you have that requires a showing of  
11 a knowledge of office practice where there  
12 is some hiatus in the chain of custody?

13 MR. BLOTKIN: Yes, your Honor. The case is United  
14 States versus Christopher, it is a Court  
15 of Appeals case, not the Second Circuit,  
16 it is a 1973 case, and the citation is  
17 488 Fed. 2nd 849, your Honor.

18 THE COURT: All right.

19 MR. BLOTNIK: My second motion is addressed to the  
20 evidence that was introduced. I move that  
21 all packets that are within Government's  
22 Exhibit 1 that haven't been tested be  
23 excluded from the evidence for the simple  
24 reason that we do not know what is in them.  
25 The chemist testified that he took fifteen

1 bags only out of that sample of, I think,  
2 thirty-seven or thirty-six in there, I  
3 did not have an opportunity to count them,  
4 and he did not test the remaining packets.  
5 Inasmuch as they were not tested, we do  
6 not know what is in them, and they cannot  
7 possible be introduced as evidence of heroin,  
8 as alleged by the People.

9 THE COURT: How do we know which ones were tested?

10 MR. BLOTHNIK: That is my next point, your Honor. We  
11 do not know what fifteen were tested. Inasmuch as we do not know which ones were tested,  
12 I would move that the whole exhibit be ex-  
13 cluded. The chemist testified at least one  
14 bag maybe -- he said all he could conclude  
15 was one bag had heroin in it, one of those  
16 little glassene bags. He could not testify  
17 how many more had heroin in it because he  
18 didn't know. He testified there was evid-  
19 ence of heroin in at least one. On that  
20 basis, I would move that that evidence be  
21 excluded, your Honor. I specifically asked  
22 the chemist yesterday, and he said he took  
23 at random fifteen, and the fifteen bags  
24 that he took out he merely screen tested,

1 and he, himself, testified that none of the  
2 screening tests, the color tests, were con-  
3 clusive as to the presence of any heroin.  
4 He said out of fifteen in the reverse  
5 pyramid or in the pyramid fashion, he only  
6 extracted eight out of the fifteen, and the  
7 eight -- he took samples out of each of the  
8 eight glassene bags and tested them as one  
9 group. That was the gas chromatography  
10 test that he claimed turned up positive.  
11 Inasmuch as we do not know which ones, if  
12 any, at least -- in his opinion, at least  
13 one of them would have sufficient evidence  
14 of heroin, but we do not know which. So  
15 I ask that the rest of them be removed.  
16 If your Honor needs it, there is a case  
17 that states that any packages that are not  
18 initialed, and in this case Officer Peterson  
19 at random initialed only about six or seven,  
20 those should be thrown out as well. The  
21 case supporting that proposition is United  
22 States versus Carlyle, 488 Fed. 2nd 869,  
23 a 1973 case.

24 THE COURT: That is a popular volume.

25 MR. BLOTHNIK: I beg your pardon?

1 THE COURT: 488 Fed. 2nd is a popular volume.

2 MR. BLOTKIK: It seems to be. I didn't notice it  
3 until just now, your Honor. That will conclude  
4 my motions on behalf of the defendants at  
5 the present time.

6 THE COURT: Mr. Mellenger?

7 MR. MELLINGER: Yes. I would like to make a few  
8 brief comments on the defendants' motions.  
9 The first motion for failure to show a  
10 prima facie case on the basis that Agent  
11 Peterson could not testify as to the custody  
12 requirements of his office, I believe Agent  
13 Peterson did testify that there's only two  
14 people who had access to the evidence vault,  
15 that would be Michael Burke and Agent  
16 Trincelito, and that if accompanied by one  
17 of those two custodians, another agent  
18 could go into the vault, but only for a  
19 specific purpose, and that would be to  
20 take out evidence which he specifically had  
21 an interest in, such as having seized him-  
22 self. I think the defense is inferring  
23 that any agent could walk in and out of  
24 that vault at any time and grab any package  
25 that was laying there. There was supervision

1 and control of this evidence, and another  
2 thing I would like to point out to the Court,  
3 as to the custody of this evidence, this  
4 evidence was only in the vault for a period  
5 of twenty-four hours or approximately one  
6 day. Agent Peterson testified that he placed  
7 the evidence in the vault after sealing it  
8 in the evidence bag, and the next day he went  
9 in and mailed it to the Northeast Regional  
10 Laboratory.

11 THE COURT: That is only one day at the outset  
12 of the case, and evidently about a week or  
13 more, more recently.

14 MR. MELLINGER: This week.

15 THE COURT: Wasn't it returned from New York about  
16 a week ago?

17 MR. MELLINGER: Well, I submit to the Court that up  
18 until the time that evidence is tested and  
19 found to contain heroin, what happens to it  
20 after that is not important.

21 THE COURT: All right.

22 MR. MELLINGER: Agent Peterson did testify that he  
23 sealed that in the envelope, evidence bag,  
24 and Mr. Griffith came in and testified that  
25 when he received that evidence bag, the seal

1 was intact. There was no indication of any  
2 tampering with that bag, which indicates  
3 that that was the same evidence which Agent  
4 Peterson sealed in that bag, and which Mr.  
5 Griffith removed from the bag. So --

6 THE COURT: Are you familiar with the Christopher  
7 case? I am not.

8 MR. MELLINGER: I am not either, your Honor.

9 THE COURT: All right.

10 MR. MELLINGER: Also the defense made mention of the  
11 fact that there was logs kept, receipts  
12 kept, and Agent Peterson wasn't familiar  
13 with these. He said he knew they were kept,  
14 but he was not the person who kept them.

15 THE COURT: He was not sure whether they were  
16 being kept at that time.

17 MR. MELLINGER: That is correct. As to the second  
18 position that all packets not tested should  
19 be removed from Government's Exhibit 1, there  
20 is more than sufficient evidence to indicate  
21 that all these packets contained heroin.

22 THE COURT: How is that?

23 MR. MELLINGER: The main purpose of this meeting at  
24 the South Park Botanical Garden was so that  
25 the defendant could sell heroin to Agent

1 Peterson. There is, in effect, an admission  
2 on their part that this was heroin, that was  
3 what they were purporting to sell, and that  
4 is what they did hand over to Agent Peterson.

5 THE COURT: That wouldn't suffice if they were saying  
6 they were selling heroin and instead were  
7 indulging in a ripoff and handing over  
8 packages of merely lactose.

9 MR. MELLINGER: That is correct. However, the sub-  
10 stance was tested, and Agent Peterson said  
11 that he performed a field test which gave  
12 him an indication that it was heroin. It  
13 was taken down to the laboratory --

14 THE COURT: He only tested two bags.

15 MR. MELLINGER: Yes, that is correct, your Honor, some  
16 of the bags. This was taken down to the  
17 laboratory and a sample of the stuff was  
18 tested and it was found to be heroin, and I  
19 think since it was found to be heroin in  
20 portions of Government's Exhibit 1, and  
21 that the defendants were purporting to sell  
22 heroin, there is sufficient proof to show  
23 that all the bundles contained heroin, plus  
24 the fact that I think it should go to the  
25 jury as to -- the exhibits should go to the

jury to examine them and determine whether --

2 THE COURT: How can they examine them?

3 MR. MELLINGER: As to the color of the powder.

4 THE COURT: How would they know anything about  
5 that?

6 MR. MELLINGER: Well, there are certain visual tests.

7 THE COURT: We haven't educated them to the point  
8 of their being able to look at it and say  
9 this contains heroin.

19 THE COURT: What if Government's Exhibit 1 were  
20 not in evidence, would that do anything  
21 to your case?

22 MR. MELLENGER: Your Honor, I feel there would still  
23 be proof that the defendants possessed  
24 heroin with the intent to distribute it.  
25 There is not a requirement that the Government

1 prove an exact amount, just a substantial  
2 amount.

3 THE COURT: What is a substantial amount?

4 MR. MELLINGER: It would have to be more than a minute  
5 amount.

6 THE COURT: Do you have any cases on that?

7 MR. MELLINGER: No, your Honor. I think, your Honor,  
8 it would be sufficient to show one packet  
9 contained heroin and they were possessing  
10 a sufficient amount in order to violate the  
11 statute, that they were possessing heroin  
12 with the intent to distribute.

13 THE COURT: You say you have no authorities on  
14 the amount?

15 MR. MELLINGER: Not at this point, your Honor, but  
16 just by the mere fact that the defendants  
17 were there for the purpose of selling heroin,  
18 they handed the package over in its totality  
19 as heroin to Agent Peterson, there has been  
20 a test performed which showed a portion of  
21 those packages contained heroin, I think  
22 there is sufficient evidence for this package  
23 to go to the jury in its totality.

24 THE COURT: All right. Anything further, gentlemen?

25 MR. MELLINGER: Yes. As to the other motion that the

1 package should be excluded because each and  
2 every one of those packages were not initialed  
3 by Agent Peterson, they were handed over to  
4 him in five bundles with rubber bands around  
5 them, and he treated those bundles as an  
6 individual package, and he initialed each  
7 bundle, he testified he treated those  
8 bundles separately and --

9 THE COURT: You are talking about Agent Peterson?

10 MR. MELLENGER: Yes. He took special care not to co-  
11 mingle the packets from the various bundles.  
12 He testified --

13 THE COURT: He weighed them and counted them, and  
14 he did take them apart, and he did initial  
15 some of the bags. He was careful to put  
16 them back together in the same order, same  
17 bundle, but aside from his field testing,  
18 which he did as to two bags, he had no  
19 indication that it was or was not heroin or  
20 was or was not a substance containing heroin.

21 MR. MELLENGER: Mr. Blotnik brought up the point that  
22 each one of the packages should be initialed.

23 THE COURT: His point, I think, is directed to  
24 the chemical analysis made by Mr. Griffith.  
25 Mr. Griffith indicated that he had certain

1 screening tests of fifteen of the bags,  
2 of a substance from fifteen of the bags,  
3 and that test, while it gave some indication  
4 of heroin being present or the possibility  
5 of heroin being present, it was not definitive,  
6 and then he selected from the fifteen, eight  
7 bags, and out of those eight bags he took a  
8 quantity from each and made a composite  
9 sample, and he subjected that composite  
10 sample to tests which definitively showed  
11 that in that composite sample there was  
12 heroin. Mr. Griffith says that he knows  
13 that somewhere among eight bags was heroin,  
14 but he never said which bags. Is that  
15 important?

16 MR. MELLENGER: I thought Mr. Blotnik was saying  
17 that any package that wasn't personally  
18 initialed by Agent Peterson should be --

19 THE COURT: Well, I think his first part went  
20 both to the identification by Peterson, and  
21 more particularly, as I understand it, to  
22 the fact that Mr. Griffith, himself, had  
23 only tested fifteen, so that the remaining  
24 quantity would go out. Did I properly  
25 understand that?

1 MR. BLOTNIK: That is correct, your Honor.

2 MR. MELLINGER: Your Honor, as indicated before, the  
3 fact that the defendants were there for the  
4 purpose of selling the heroin, the fact the  
5 package was -- part of the package was found  
6 to contain some heroin, should not affect  
7 the admissibility of Government's Exhibit  
8 1, it should go to the jury.

9 THE COURT: All right. Now, getting back to the  
10 other question, what happens to the Govern-  
11 ment's case if Government's Exhibit 1 is  
12 not "in evidence"?

13 MR. MELLINGER: I'm not positive at this time, your  
14 Honor. It would seem to me that even if  
15 Government's Exhibit 1 were not in evidence,  
16 you would still have a *prima facie* case, in  
17 that we have shown an unbroken chain of  
18 custody from the point that Government's  
19 Exhibit 1 was taken from the defendants  
20 until the time it was analyzed to be heroin.  
21 But I am still stressing that the Government  
22 has moved it into evidence, it has been  
23 admitted, it should go to the jury. Whatever  
24 point Mr. Blotnik has brought out should go  
25 to the weight and not the admissibility of

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

1 that exhibit.

2 THE COURT: What do you view the effect will be  
3 if Government's Exhibit 1 is removed from  
4 evidence, as such?

5 MR. BLOTHNIK: Your Honor, first of all, the crime  
6 charged is intent to distribute --

7 THE COURT: Possession with intent to distribute.

8 MR. BLOTHNIK: That is correct. In the event that  
9 the exhibit is excluded, they certainly  
10 couldn't come to any conclusion that there  
11 was an intent to distribute, inasmuch as  
12 a substantial amount, as Mr. Mellenger has  
13 indicated, is necessary in order to convict  
14 of that particular offense. Inasmuch as  
15 we do not know what is in those packets,  
16 I can't possible see under what --

17 THE COURT: Now, you are going back to the con-  
18 tention that the case has not been proved.  
19 I am asking a narrow question. What, if  
20 any, effect is there on the case if the  
21 exhibit itself is not in evidence? Suppose  
22 the Government had never moved Exhibit 1  
23 in evidence.

24 MR. BLOTHNIK: I think it is part of the prima facie  
25 case to prove there was some heroin exchanged,

1 otherwise a different charge should have  
2 been brought.

3 THE COURT: There must be evidence that what was  
4 procured from Jackson and Reynolds did  
5 contain heroin.

6 MR. BLOTHNIK: That is correct, your Honor.

7 THE COURT: As to whether they could be proved  
8 without the package itself going in evidence.

9 MR. BLOTHNIK: . It is a question for the jury, a  
10 question of fact as to whether they believe  
11 the expert that testified here.

12 THE COURT: I agree.

13 MR. BLOTNIK: All he testified is that there was  
14 some trace --

15 THE COURT: Now we are back to the more broad  
16 question as to which your motion is directed.  
17 I am going to deal with it. I am asking that  
18 narrow question, what if the Government never  
offered Government's Exhibit 1 in evidence?

20 MR. BLOTHNIK: I think it would directly bear on  
21 the charge of intent to distribute. In  
22 other words, I think it would be prejudicial  
23 if the jury were to be under the impression  
24 that this large number of bags was heroin,  
25 which it isn't, at least it hasn't been

1 proven.

2 THE COURT: All right. I will take a little recess  
3 and make up my mind.

4 MR. MELLENGER: Your Honor, may I say one more thing?  
5 This exhibit has already been offered in  
6 evidence and accepted.

7 THE COURT: I understand it has, but I may take it  
8 out of evidence. I am wondering, technically,  
9 what would happen if it were not in evidence,  
10 is it necessary to the Government's case  
11 that the envelope and the heroin be in  
12 evidence, so the jury can fondle it and  
13 look at it. I don't really think that it  
14 is, but I don't know. We will take a brief  
15 recess.

16 (Thereupon the court was in recess  
17 at 9:30 A.M.)

18 (Proceedings resumed, pursuant to  
19 recess, commencing at 10:05 A.M.)

20 (Defendants present, counsel present,  
21 jury absent.)

22 THE COURT: All right. I have given attention to  
23 the motions made by you, Mr. Blotnik, and  
24 to the cases that you have cited. It is  
25 my ruling that the Government is not called

1 upon to make the showing of continuous  
2 chain of possession or, in lieu thereof,  
3 a showing of a knowledge of office practice,  
4 but what is essential is that there be  
5 reliable evidence that what was tested, and  
6 in this case what is in evidence as Govern-  
7 ment's Exhibit 1, actually was or actually  
8 contains that other envelope and those other  
9 packages and substances which was obtained,  
10 according to the testimony of Mr. Peterson,  
11 from Mr. Reynolds on July 10, 1975, and if  
12 the jury is satisfied that that is so, that  
13 the packages which Mr. Griffith tested, and  
14 from which he was able to say that it was  
15 definitively was heroin contained therein,  
16 is the same package that Mr. Peterson obtained  
17 from Mr. Reynolds, that would be sufficient.  
18 Now, on the other point, as far as the  
19 taking out of evidence or putting aside  
20 from the consideration of the jury those  
21 bags as to which there is no indication  
22 which contained the heroin, which Mr.  
23 Griffith testified that he was able to say  
24 definitively was present when he dealt  
25 with the composite sample, there is no need

1 to show that there was hercin present in  
2 every bag. The evidence does reliably  
3 show that in one bag, and we don't know  
4 which among the thirty-four or so which  
5 were contained in the baggie bag, which  
6 Mr. Peterson said he got from Mr. Reynolds  
7 on that date, did contain heroin. We do  
8 not know which bag, but it is not important.  
9 We have a quantity of substance which is  
10 contained in a quantity of envelopes, of  
11 bags, and it is sufficient for the Government'  
12 case if there be shown to have been a  
13 measurable amount, an amount which does  
14 enable the chemist to say definitively that  
15 there was heroin present among those various  
16 bags. So I am denying both of the defense  
17 motions. Now, I get back to my narrow  
18 question, and I see no reason to upset the  
19 admission of Government's Exhibit 1 in  
20 evidence, and I will allow it to remain  
21 in evidence. At the proper time I will  
22 take under consideration any motion that  
23 the defense wants to make as to whether or  
24 not Government's Exhibit 1 should be allowed  
25 to go into the jury room. I will deal with

that separately, if the defense makes it.  
So the defense motions are denied.

3 MR. BLOTHNIK: Your Honor, should the defense make  
4 the motion regarding the exhibit at the  
5 present time or --

6 THE COURT: No, make it at the appropriate time,  
7 which would be just before submission to the  
8 jury. All right, the Government having rested,  
9 what about the defense?

10 MR. BLOTNIK: The defense will present no witnesses.

11 THE COURT: So the defense also is resting and  
12 technically, I assume, renews the two motions  
13 made at the end of the Government's case?

14 MR. BLOTNIK: Yes, your Honor.

14  
15 THE COURT: You have no further motions to make at  
16 this time, and my ruling, of course, is the  
17 same.

17  
18 MR. BLOTHNIK: If I may just add one other thing?  
19  
20 Government's Exhibit 1 was admitted and  
21 accepted as evidence of heroin, and there  
22 has been no testimony, other than the fact  
23 that there is some heroin in it, the substance  
24 contained therein is heroin, and under that  
proposition, I would request that it be  
excluded again.  
25

1 THE COURT: I am not going to exclude it from  
2 being in evidence. Whether we allow it to  
3 go to the jury room is a separate question.

4 MR. BLOTHNIK: Am I to understand that is in evidence  
5 as heroin?

6 THE COURT: Oh, yes. In that package -- if Mr.  
7 Griffith's testimony is to be believed --  
8 in that package, Government's Exhibit 1,  
9 there is heroin.

10 MR. BLOTHNIK: I am going to object to that. Thank  
11 you, your Honor.

12 THE COURT: Yes. All right, bring up the jury.  
13 Now, I have had in the case no requests for  
14 instructions from either side. Consequently,  
15 I have no necessity to advise either one  
16 of you as to my rulings on what I am going  
17 to charge or what I am doing on your requests.

18 MR. MELLINGER: Your Honor, I have a request, and I  
19 think Mr. Blotnik has one.

20 MR. BLOTHNIK: Does the Court request a full instruct-  
21 ion or merely the type of instruction?

22 THE COURT: Pardon me?

23 MR. BLOTHNIK: Does the Court request a full instruct-  
24 ion, written instruction, or merely the type  
25 I would wish to be made?

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

---

UNITED STATES OF AMERICA

Plaintiff-Appellees

vs

CERTIFICATE OF SERVICE

JEROME REYNOLDS and  
MELVIN JACKSON

Docket No. 76-1321

Defendants-Appellants

---

I, ROCCO D. POTENZA, attorney for appellants in the above entitled cause, hereby certify that on the 31st day of August 1976 I served the attached Appendix for the Appellants upon the United States Attorney for the Western District of New York, attorney for the Appellee by depositing a copy of same in the United States mails, postpaid, addressed to him at the United States Courthouse Buffalo, New York, his last known address.

ROCCO D. POTENZA  
Attorney for Appellants  
Office & P.O. Address  
1100 Chemical Bank Building  
Buffalo, New York 14202

UNITED STATES OF AMERICA

Plaintiffs-Appellees

v s

CERTIFICATE OF SERVICE

JEROME REYNOLDS

Docket No. 76-1321

and

MELVIN JACKSON

Defendants-Appellants

ROCCO D. POTENZA

Attorney for  
defendants-appellantsOffice and Post Office Address  
1100 CHEMICAL BANK BLDG.  
69 DELAWARE AVE.  
BUFFALO, NEW YORK 14202  
853-5300Personal Service of the within  
hereon endorsed, is admitted this

day of

and of the notice (if any)

19

.....  
Attorney(s) for

Sir:—Please take notice

Notice of Entrythat an  
within entitled action on the  
in the office of the Clerk of the County ofof which the within is a copy, was duly granted in the  
day of 19 , and duly entered  
on the day of 19

To

Attorney(s) for

STATE OF NEW YORK, COUNTY OF

SS.:

Initial

Certification  
by Attorney

The undersigned attorney certifies that the within  
has been compared by the undersigned with the original and found to be a true and complete copy.

Initial

Attorney's  
Affirmation

The undersigned, an attorney admitted to practice in the courts of New York State, shows: that deponent is  
the attorney(s) of record for  
in the within action; that deponent has read the foregoing  
and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein  
stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent  
further says that the reason this verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

STATE OF NEW YORK, COUNTY OF

SS.:

Initial

Individual  
Verification

he  
being duly sworn deposes and says that  
in this action; that he read the foregoing  
and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein  
stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Initial

Corporate  
Verification

being duly sworn, deposes and says that he is the  
of  
the corporation named in the within entitled action; that he has read the foregoing

and knows the contents thereof; and that the same is true to his own knowledge, except as to the matters therein  
stated to be alleged upon information and belief, and as to those matters he believes it to be true.  
Deponent further says that the reason this verification is made by deponent and not by

is because the said

is a corporation and the grounds of deponent's belief as to all matters in the said  
not stated upon his own knowledge, are investigations which deponent has caused to be made concerning the subject  
matter of this and information acquired by deponent  
in the course of his duties as an officer of said corporation and from the books and papers of said corporation.

Sworn to before me, this  
day of 19

STATE OF NEW YORK, COUNTY OF

SS.:

Affidavit  
 of Service  
By Mail

being duly sworn, deposes and says; deponent is not a party to the action,  
is over 18 years of age and resides at  
On 19 deponent served the within  
upon attorney(s) for in this action, at  
the address, designated by said attorney(s) for that purpose  
by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in a post office—official  
depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Affidavit  
 of Personal  
Service

On 19 at  
deponent served the within upon  
herein, by delivering a true copy thereof to him personally. Deponent knew the  
person so served to be the person mentioned and described in said papers as the  
therein.

Description

The person served would be about as approximately years of age lbs. ft. in.  
male female hair skin eyes other

Sworn to before me, this  
day of 19